Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	MM 95-42
	)	
Amendment of Part 73 of the Commission's Rules to Provide Standards for "Special Signal" Use of Line 22 of the Television Broadcast Signal.	)	RM - 7567

To: The Commission

PETITION FOR RULEMAKING

Airtrax, a California general partnership, by its attorneys and pursuant to Section 1.401 of the Commission's rules, 47 C.F.R. § 1.401, hereby requests that the Commission issue a Notice of Proposed Rulemaking to amend Part 73 of the rules to set standards for "special signal" use of Line 22 of the television broadcast signal.

I. BACKGROUND AND INTRODUCTION

A "special signal" is a signal related to broadcast operation, but not intended for use by the public. Line 22 is the first line of "active" video on the television broadcast signal following the vertical blanking interval ("VBI"). In the last several years, many entities, including Airtrax, have developed special signals for use on Line 22 that allow broadcasters, programmers, advertisers, and others to monitor and verify the delivery of various program

material. Line 22 is preferred for these purposes because, due to overscanning, it is unlikely to be seen by the viewing public, while, as part of the active video, it is also unlikely to be stripped out inadvertently by improperly aligned video recording equipment.

To date, the Commission has granted authorization to those seeking to use Line 22 for these "special signals" on an ad hoc basis. For the reasons described more fully below, Airtrax respectfully submits that the Commission should take this opportunity to set standards and technical parameters which will allow full use of Line 22 and thus fulfill its statutory mandate to promote new technologies.

A. The Commission Has Authorized Several Systems to Use Line 22

In April 1970, the Commission recognized the benefits of special signals, but required that they not be transmitted without its specific authorization. See Use of Special Signals for Network Purposes Which Adversely Affect Broadcast Service, 22 FCC 2d 779 (1970). Subsequently, the Commission began granting authorizations for special signals on an ad hoc basis. In 1981, the Commission authorized the transmission of source identification ("SID") signals in the VBI. 46 FR 40024 (Aug. 6, 1981).

In 1985, the Commission authorized the use of two systems designed to operate on line 22 for commercial

identification purposes. In 1986, Republic Properties, Inc., an affiliate of and the predecessor in interest to Airtrax, obtained authorization for Line 22 use of its commercial identification and verification system.

In 1989, the A.C. Nielsen Company ("Nielsen") sought authority to use Line 22 for its Automated Measurement of Lineup ("AMOL") System. The Line 22 AMOL System is designed to identify network programming "feeds" to affiliates and to identify syndicated programming.[1] Nielsen's request was contested at the Commission. Several parties, including Airtrax and Vidcode, Inc. ("Vidcode"), another entity with authorization to use Line 22 for its special signal, contended, among other things, that Nielsen's system would not be compatible with their existing systems. The Commission granted Nielsen temporary authority to use Line 22 on the condition that it not interfere with other users.[2]

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[1] As originally offered, AMOL provided information of network lineups and has, for several years, been transmitted on Line 20. Ostensibly because of problems with the stripping out of Line 20 in syndicated programs, Nielsen now seeks to use Line 22.

[2] Nielsen is currently seeking permanent authority to use Line 22 for its AMOL system. Airtrax, which is concurrently filing an opposition to that request, requests that the Commission withhold grant of permanent authority until it has had time to consider this petition. Airtrax does not, however, oppose an extension of Nielsen's temporary authority during the pendency of the proceeding requested herein. Indeed, such authority could provide the basis for development of the sort of "real world" data so lacking in the record generated heretofore.

B. Additional Systems Are in Development

In addition to the special signals which already have been granted authority to use Line 22, others are in development. For example, Real-Time Designs is developing a system that will allow for the identification of programming entitled to syndicated exclusivity or network nonduplication protection. Such a system will aid broadcasters and cable operators in identifying and deleting such programming. Line 22 also offers opportunities to utilize interactive television and the transmission of other broadcast related material.[3]

C. The Ad Hoc Approach to Line 22 Authorizations Will Soon Preclude Future Users From Access

Airtrax submits that the Commission's ad hoc approach to authorizations for special signals to use Line 22 is no longer tenable. Even with the limited number of special signals currently authorized, disputes have arisen as to how to ensure the compatibility of existing systems and to ensure

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[3] Interactive television would allow viewer participation through the use of ancillary devices that connect to a television receiver in order to enhance entertainment or instructional use of the program (e.g., a terminal to facilitate the recordation of answers to questions posed during a televised course). Although the signals for such activity may not fit within the historic definition of "special signals," the Commission should at least consider the benefits of allowing such uses in line 22 because of the same problems encountered with the use of the VBI.

that one entity's system will not preclude other users from access. As additional users seek authority and new uses for Line 22 are developed, this situation will only be exacerbated.

Indeed, the Commission, in granting Nielsen temporary authority to use its AMOL System, has already noted that "the increasing use of tracking and other codes on video lines underscores the importance of precise, controllable and compatible encoding systems." Letter dated November 22, 1989 from Roy J. Stewart to Grier C. Raclin.

D. A Marketplace Approach is Inappropriate to the Determination of Technical Standards

Before the market chooses those technologies and services that will utilize Line 22, the Commission should establish ground rules by which competition may take place. Reliance on a "marketplace approach" alone will, in this instance, not result in the development of an open standard which will allow alternative and multiple uses of Line 22. Rather, because of the dominance of Nielsen, the acknowledged usefulness of its service when applied to ratings and the likelihood that many licensees will utilize it, others seeking to use Line 22 will be forced to make their systems compatible with Nielsen's older technology, if possible. Thus, at this point, Nielsen's older technology can preclude

other Line 22 entrants who use the latest technology from getting to the market.

This result need not be predicated on anticompetitive conduct by Nielsen. The simple fact, however, is that Nielsen is well entrenched in the marketplace because its service is a virtual necessity for broadcasters. The use of the Nielsen technology on Line 22 will not result from its superiority -- indeed, it is much less advanced than that of Airtrax, for example -- but from the desirability of Nielsen's program verification service, especially when coupled to the ability of the service to help automate viewer ratings.

In short, the use of one technology will likely preclude other users from even gaining access to Line 22. Airtrax is merely asking that the Commission ensure that the standards for use of Line 22 allow for the most complete access of all users and maximum flexibility for other broadcast-related uses. The marketplace can then decide which services it desires.

II. THE COMMISSION SHOULD INSTITUTE THE REQUESTED RULEMAKING TO SET STANDARDS FOR SPECIAL SIGNAL USE ON LINE 22

The Commission has a statutory duty to promote the provision of new technologies and services to the public. 47 U.S.C. § 157(a). Development of standards for special signal use of Line 22 will allow the Commission to further this duty

and to promote the efficient use of the spectrum. Parties opposing these new technologies and services have the burden of demonstrating that the proposal is inconsistent with the public interest. Id.

Accordingly, Airtrax respectfully submits that the Commission should institute a rulemaking proceeding in order to set standards for Line 22 that achieve the following:

(1) maintain licensee discretion to broadcast the special signals;

(2) ensure that the use of Line 22 is broadcast related;

(3) ensure that the special signal does not degrade the broadcast signal;

(4) prohibit users of Line 22 from "overwriting" other users without authority; and

(5) develop technical standards for an "open" system which allows for alternative and multiple uses of Line 22.[4]

III. CONCLUSION

For the foregoing reasons, Airtrax urges the Commission to release a Notice of Proposed Rulemaking proposing rules to govern special signal use of Line 22 of the television

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[4] The development of technical standards can be accomplished in a number of ways. The Commission could simply invite comment and then propose a regulation. Airtrax submits, however, that, for the reasons described more fully in Attachment A, the present petition provides the Commission with a perfect opportunity to study the effectiveness of regulatory negotiation, or "reg-neg," in the rulemaking context. As an alternative, the Commission could form an ad hoc "Line 22 Committee" for the purpose of resolving disputes among the parties.

broadcast signal. Airtrax submits that the rules suggested in this Petition would, if adopted, further the public interest by promoting the development of future technology and by encouraging efficient use of the broadcast spectrum.

Respectfully submitted,

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Attachment A

REGULATORY NEGOTIATION

There has, of late, been a growing appreciation for the incredibly high costs associated with the rulemaking process. Conflict, delay and dollars all combine to decrease dramatically the efficiency of formal rulemaking. Sensitive to these concerns, administrative agencies have begun increasingly to explore alternative means of dispute resolution. One of the most successful of these techniques, developed and championed by the Administrative Conference of the United States ("ACUS"), is negotiated rulemaking (sometimes called "regulatory negotiation" or "reg-neg").

Reg-neg is, simply, negotiations among parties representing diverse interests, convened and mediated by an agency, to the end of producing a proposed rule for agency consideration.[1] Generally, an agency asks a "convener" -- either an outside contractor or a government employee not otherwise involved in the proceeding -- to assess whether neg-reg is appropriate.[2] The convener recommends to the agency whether to establish a committee comprised of all

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[1] The most complete discussion of reg-neg, from which much of this discussion is taken, is in the ACUS's Negotiated Rulemaking Sourcebook (Office of the Chairman, Sept. 1989) ("Sourcebook").

[2] We emphasize that the ACUS recommended procedure is just that, a recommendation. The Commission can adjust or modify the procedure to the extent it deems one recommendation or the other unsuited for the issues or the industry it oversees.

concerned interests to negotiate a draft rule.[3] The ACUS recommends that a "facilitator," or an individual experienced in multi-party dispute resolution (who may or may not be the convener), aid in the negotiation of the proposed rule, which is generally then subject to notice and comment.

This proceeding is especially suited to reg-neg, for it meets all of the criteria established by the ACUS for using the procedure. First, "a limited number of interests will be significantly affected, and they are such that individuals can be selected to represent them."[4] The interests here are few and known. The broadcasters, programmers, advertisers, Nielsen, Airtrax and Vidcode are the major parties in interest. Certainly this is a group well below the recommended ceiling of 25 for an effective reg-neg. Second, "the issues are known and ripe for decision."[5] The question of how to dispose of line 22 is not amenable of an infinite number of solutions. Moreover, a decision can, indeed should, be made as soon as possible.

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[3] The ACUS notes that "[o]rdinarily, the committee would be formally chartered under the procedures of the Federal Advisory Committee Act," Pub. Law 92-463, 5 U.S.C. App., Sourcebook, at 7, although this is not a firm requirement. The ACUS further suggests that "[p]ublic notices explaining the agency's plan for proceeding, in addition to any general requirements for establishing advisory committees, can be very useful as a check against an essential party being overlooked." Id.

[4] Sourcebook, at 37.

[5] Id.

Third, to resolve the issue, no party need compromise a fundamental value. The issue is one of allocation; compromise would not require any party "to violate something it holds as a fundamental precept."[6] Fourth, more than one issue is presented. The possibility for compromise exists because line 22 can be allocated in a number of ways. Fifth, the outcome is generally in doubt, and no one party would be able to dominate the proceeding as a matter of raw power. Finally, the parties here are capable of being convinced that it is in their interest to use the process because, in the end, their ability to articulate their views to the agency will be greater at the bargaining table than in a formal rulemaking proceeding. In addition, the technical complexity of the issues makes even more necessary and appropriate ongoing discussion and interaction between the private parties and the Commission.

In short, this dispute is a perfect candidate for reg-neg, so long as the agency is committed to the process and establishes a deadline by which the parties must agree on a draft rule.

Reg-neg has been used with increasing success by the Environmental Protection Agency (8 reg-negs), the Federal Trade Commission (1), the Nuclear Regulatory Commission (2), and the Departments of Labor (2), Interior (1), Education

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6 Id. at 38.

(1), Transportation (3), and Agriculture (1).[7] Moreover, it is not far removed from previous attempts by the Commission to encourage negotiations to facilitate agreement for the dual purposes of minimizing acrimony and saving scarce Commission resources.[8]

The broader participation of parties, the opportunity for creative solutions to regulatory problems, and the potential for avoiding expensive and time-consuming litigation each contribute to the significant benefits that reg-neg can, in the right context, have over an adjudicated rulemaking. Some of those long-term benefits include reduced time, money and effort expended in developing and enforcing rules; earlier implementation; higher compliance rates; and more cooperative relationships among the agency and the other parties.

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[7] For a complete description of these reg-negs, see Sourcebook, chap. 10 passim.

[8] See, e.g., RKO General, Inc., 60 RR 2d 1604 (1986) (Mediation Order) (Commission consideration of proposed settlement agreement); Exchange Network Facilities for Interstate Access, 71 F.C.C.2d 440, 443 (1979) (Commission "convened meetings among the interested parties to determine if an interim negotiated settlement could be reached."); AT&T, 52 F.C.C.2d 727, 732 (1975) (Commission "postponed procedural dates to allow the parties to enter into and continue informal settlement discussions, under the aegis of the Commission"); Communications Satellite Corp., 45 F.C.C.2d 286 (1974) (waiving ex parte rules "to the limited extent necessary to permit the parties, under the chief of the Common Carrier Bureau (or his designee), to proceed to further negotiations").

Airtrax believes that these benefits more than justify a Commission experiment with the reg-neg process for this proceeding. Airtrax looks forward eagerly to working with the Commission to find an innovative, practical, and efficient solution to this dispute, and is hopeful that its competitors for the use of line 22 are similarly so disposed.